

March 26, 2002

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)
)
)

Montana Public Service Commission
Comments and Response to the Notice of Proposed Rule Making

INTRODUCTION

The purpose of this proceeding is to clarify and improve the FCC rules regarding the Schools and Libraries Universal Service Mechanism (“E-Rate”). The Montana Public Service Commission (“PSC”) shares the FCC’s goals (“stated goals”) to improve program operation, to ensure fair and equitable distribution of benefits, and to reduce waste, fraud and abuse. The PSC also is concerned with the interests of rural consumers and providers. The PSC strongly supports all components of universal service under Section 254. Although benefits from the Schools and Libraries program tend to flow more toward urban areas than rural, the PSC embraces the “all for one, one for all” spirit of universal service. The PSC strongly supports Schools and Libraries payments to deserving urban recipients, and appreciates equally strong support from urban states for the High Cost Fund Program.

The PSC undertook an aggressive, innovative outreach and advocacy program to help ensure that Montanans receive the full benefit of the Schools and Libraries program, and maximized the value of the support received.¹ Because the program is a success, these comments focus on fine tuning, not dramatic changes.

The PSC generally opposes any program change that would divert funds away from rural communities. Although a reduction in the high cost support is not necessarily

¹ It also continued that effort, concerning Telemedicine and Enhanced Lifeline.

an outcome, the PSC remains wary that dramatically expanding the E-Rate program may detract funds from the high cost support.

The PSC will address each area of interest to the FCC and comment on each issue therein as appropriate. The PSC comments primarily on general policy concerns. The PSC has not engaged in extensive fact finding as it believes applicants and carriers can better provide such information. As such, the PSC comments serve more as policy guidance for developing rules that promote the stated goals of the Notice and reflect the concerns of rural states such as Montana.

THE APPLICATION PROCESS

1. Eligible Services

In regards to the eligible services list, the PSC favors any process that eases the application process. If a computerized list facilitates a better application process, then the PSC favors the use of such a list. Factors important the PSC include: system reliability, testing prior to the application window, and the availability of alternatives.

If an electronic list should be initiated, the PSC recommends that the site be able to carry the high volume of traffic during the application window period. This would include having the necessary network system administrators to keep the system online and to fix system outages quickly. The application process is very time sensitive and any problem with the network impedes the applicant's ability to determine eligible services within that timeframe. The network infrastructure will also require capacity for multiple internet viewings at the same time. In fact excess capacity may be preferable. The system administrators should also test the system prior to the application window period. Without testing, the PSC is unsure that having an electronic list would ease the application process. The PSC also suggests that alternatives be addressed. If the system is down, applicants should have some recourse to determine eligible services rather than to file applications blind. Unless these issues are addressed, the PSC is unsure how an electronic list of eligible services aids the application process.

Regarding the current selection of eligible services and products, the PSC generally favors existing rules over any modifications. Any expansion should be

carefully considered, taking into account the need to adequately fund other universal service programs.

The PSC supports existing rules concerning WANs. Expanding WAN eligibility likely favors mostly the 90% discount applicants. Completely striking or reducing WAN eligibility, on the other hand, does not appear to be necessary. The PSC has been informed that some applicants in Montana have provided WAN services in anticipation of receiving a discount. On balance, leaving existing rule on WANs appears to be fair.

Concerning wireless services, the PSC believes that the e-rate should be technology neutral. Existing rules appear to provide appropriate discounts to wireless services for education purposes. In regards to discounts for wireless services on school bus routes, the PSC favors modifications that allow wireless services for student safety. In rural areas during poor weather, a school bus should have telecommunications access. Wireless services for bus routes appear to be a viable option in cases where student safety is in question.

In regards to voice mail services, it appears that voice mail should be considered part of POTS, applicants would like to get this service. If voice mail imposes a substantial cost burden on the fund, then the PSC would not favor its inclusion.

2. Discounts for Internet Access when Bundled with Content

The PSC chooses not to comment on this issue.

3. Review of Requests Including Eligible and Non-Eligible Services

The PSC maintains that the 30% threshold is appropriate and necessary. The burden should be placed on the applicant and service providers to request only eligible services. This 30% threshold provides a clear incentive for applicants and providers to only request eligible services.

4. Compliance with the Americans with Disabilities Act

The PSC does not believe the E-Rate Program is the appropriate context for ADA certification.

5. Consortia

The PSC believes that eligible entities should receive e-rate discounts in any form of consortia. As long as the ineligible entities do not receive discounts supported by universal service, consortia should be encouraged. Consortia allow communities to plan

together to more efficiently build the telecommunications network and more appropriately allocate scarce resources.

Administrative costs should mostly be shouldered by the consortia. It should be up to the applicants to certify that universal service funds are only supporting eligible entities. These costs should not outweigh the benefits of consortia planning.

POST COMMITMENT PROGRAM ADMINISTRATION

1. Choice of Payment Method

The PSC encourages the FCC to provide direction and rules protecting the applicant's payment options. E-Rate funding goes unclaimed because some providers are neither billing the discount for the schools and libraries nor giving them both payment options from which to choose. Some schools and libraries have filed comments illustrating this. To a small rural school the dollars lost are important. In year two, St. Labre School in Ashland, Montana lost \$10,324.80 because the provider did not bill the discount. The provider later went bankrupt, making remittance to the school difficult. In fact, the school has yet to receive the money. The PSC suggests the FCC direct providers to allow the applicant to choose which payment option to be used. This would ensure that schools and libraries can be billed in the fashion that works best for them.

For applicants using the BEAR payment option, a 20-day remittal after the applicant's request is not a burden on the carriers. The PSC urges the FCC to adopt this rule.

2. Equipment Transferability

Although the PSC is not aware of equipment transfers in Montana, the PSC does encourage the FCC to establish rules on this issue. In particular, the PSC supports the three years of use rule before transferring internal connections, except cabling. The PSC also supports rules on cabling that require ten years of cabling use before transferring.

In regards to paragraph 40 in the Notice proposing to deny internal connection transfer discounts within a specified time-frame, the PSC is concerned about such a rule. The PSC thinks that the rule should not punish non-abusers who may legitimately require additional discounts to expand their systems from year to year. The FCC should consider a dollar amount limit rather than a time period limit on discounted services.

3. Use of Excess Services in Remote Areas

The PSC acknowledges that situations in Alaska may require unique solutions for remote areas. Most Montana rural areas already have access to broadband services. The PSC does not support adoption of rules that generally expand the possibility of excess services in remote areas being used by ineligible entities. The waiver given to Alaska was an exception to the existing rules. The use of excess services in remote areas should be granted only as an exception after investigation.

APPEALS

1. Appeals Procedure

The PSC supports increasing the time allotted to file appeals to 60 days. An appeal should be considered as filed the day it was post-marked. Both rule changes would remove the disadvantage rural applicants face when dealing with mail delivery. These policies would not burden the process.

2. Funding of Successful Appeals

The PSC does not support any rule that would penalize a successful appeal simply because it involves Priority Two services. Appeals should be granted regardless of the services involved. This best promotes fairness in the appeals process. If the funds allocated for appeals depletes, funds available from the following year should be used. No distinction should be made between the funding of appeals for Priority One or Priority Two services.

ENFORCEMENT

1. Independent Audits

The PSC supports the use of audits to ensure the appropriate use of universal service funds. The PSC suggests that a dollar amount limit be placed on the amount paid by small applicants for the audit. In particular the dollar amount paid towards the audit should not exceed the dollar amount requested by the applicant. Unlimited exposure to audit expenses discourages applications for discounts.


2. Prohibitions of Participation

The PSC supports the punishment on documented abuses of the program. There are no known abuses in Montana but remains concerned nonetheless. If a violation is suspected, an audit should be used to investigate. An entity not complying with the rules should be warned on the first offense. If a repeat violation is suspected the following

In cases where there is only one provider to an area, the FCC should consider imposing fines, rather than prohibit participation, for offending providers. For example, if Qwest Communications violated E-Rate rules in Denver, CO, it should not be prohibited from participating in the program in Hamilton, MT. A fine would be more appropriate in this case. However, that scheme should not preclude prohibition on a provider where alternative providers exist.

UNUSED FUNDS

The PSC supports using the E-Rate funds for the sole purpose of providing telecommunications services to schools and libraries. Unused funds should not be remitted to USF contributors, as the E-Rate requested funds have exceeded the available funds repeatedly. 47 C.F.R Section 54.507 clearly requires that unused funds should be carried over to the following year.

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